

AMENDED IN SENATE JUNE 14, 2005

AMENDED IN SENATE MAY 31, 2005

AMENDED IN ASSEMBLY APRIL 4, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 769**

**Introduced by Assembly Member Jerome Horton**  
(Coauthor: Senator Alquist)

February 18, 2005

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An act to ~~add Sections 336, 6073, and 6416 to the Business and Professions Code, and to~~ amend Section 17980.7 of the Health and Safety Code, relating to residential real property.

### LEGISLATIVE COUNSEL'S DIGEST

AB 769, as amended, Jerome Horton. Residential real property.

The State Housing Law requires the housing or building department or, if there is no building department, the health department, of every city, county, or city and county, or a specified environmental agency to enforce within its jurisdiction all of the State Housing Law, the building standards published in the State Building Standards Code, and other specified rules and regulations. If there is a violation of these provisions or any order or notice that gives a reasonable time to correct that violation, or if a nuisance exists, an enforcement agency is required, after 30 days' notice to abate the nuisance, to institute any appropriate action or proceeding to prevent, restrain, correct, or abate the violation or nuisance. If the owner fails to comply within a reasonable time with the terms of an order or notice, existing law authorizes, among other things, the enforcement agency to seek and the court to order imposition of specified penalties or the enforcement

agency, tenant, or tenant association or organization to seek and the court to order the appointment of a receiver for a substandard building.

This bill would, on and after July 1, 2006, authorize an enforcement agency to require an owner of residential rental property to successfully complete 15 hours of educational courses, seminars, or workshops that are approved by the Department of Real Estate or the enforcement agency, as specified, if he or she fails to comply within a reasonable time with the terms of an order or notice to repair or abate a building condition that is in violation of a housing or building standard to an extent that the health and safety of the residents or the public is substantially endangered.

~~This bill would require the Department of Consumer Affairs, on its Internet Web site, to make available the text of statutes relating to the management, operation, leasing, and renting of residential real property. The bill would require lessors of residential real property to direct tenants to that Web site through a notice in the lease or rental agreement or an addendum to that agreement.~~

~~This bill would require attorneys or unlawful detainer assistants providing assistance to a defendant in an unlawful detainer action to provide a specified notice to the defendant relative to the impacts of negative credit reporting and filing an answer to the claim.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     ~~SECTION 1. The Legislature finds and declares all of the~~
- 2     ~~following:~~
- 3     ~~(a) Educating and informing the consumer regarding existing~~
- 4     ~~state residential rental property laws is essential to the fair and~~
- 5     ~~efficient functioning of a free enterprise economy in the housing~~
- 6     ~~market.~~
- 7     ~~(b) There are many state laws that are intended to promote and~~
- 8     ~~protect the interests of residential rental property tenants as~~
- 9     ~~consumers, but some tenants and some lessors of residential real~~
- 10    ~~property are not aware of those laws.~~
- 11    ~~(c) It is not uncommon for new residential rental property~~
- 12    ~~housing laws to be enacted because of a misunderstanding or~~
- 13    ~~lack of knowledge of existing laws.~~

1 ~~(d) Creating opportunities to educate and inform consumers~~  
2 ~~and lessors of residential rental property will promote and protect~~  
3 ~~the interests of consumers and lessors.~~

4 SEC. 2. ~~Section 336 is added to the Business and Professions~~  
5 ~~Code, to read:~~

6 336. ~~(a) The department shall make available on its Web site~~  
7 ~~the text of those statutes that are reasonably likely, as determined~~  
8 ~~by the department, to apply to the management, operation,~~  
9 ~~leasing, and rental of residential real property. For this purpose,~~  
10 ~~the department shall consult with organizations representing~~  
11 ~~tenants, owners, and managers of residential real property, and~~  
12 ~~with any other public or private organizations or persons deemed~~  
13 ~~appropriate by the department. This section is not intended to~~  
14 ~~require an interpretation of the affected statutes to be provided.~~

15 ~~(b) This section shall not become operative unless and until~~  
16 ~~the department concludes that it has adequate resources to~~  
17 ~~implement this section.~~

18 ~~(c) A lessor of residential real property shall provide written~~  
19 ~~notice to a tenant directing the tenant to the department's Web~~  
20 ~~site within five days of the initial date of occupancy.~~

21 ~~(d) A lessor of residential real property may satisfy the~~  
22 ~~notification requirement of subdivision (c) by providing in the~~  
23 ~~lease or rental agreement, or addendum to the agreement, in not~~  
24 ~~less than 8-point type, the following language, or language that is~~  
25 ~~substantially similar:~~

26 ~~"Pursuant to Section 336 of the Business and Professions~~  
27 ~~Code, information about California state statutes that apply to the~~  
28 ~~renting or leasing of residential real property is made available to~~  
29 ~~the public via an Internet Web site maintained by the Department~~  
30 ~~of Consumer Affairs at <http://www.dea.ca.gov>."~~

31 ~~(e) Subdivision (c) shall only apply to written agreements that~~  
32 ~~are entered into by the parties six months or later following the~~  
33 ~~date the department makes available the information on its Web~~  
34 ~~site pursuant to subdivision (a).~~

35 ~~(f) If a lessor of residential real property provides written~~  
36 ~~notice directing the lessee to the department's Web site as~~  
37 ~~provided in subdivision (d), the lessor is not required to provide~~  
38 ~~information in addition to that contained in the agreement or~~  
39 ~~addendum, and the information in the agreement or addendum~~

1 shall be deemed to be adequate to inform the lessee pursuant to  
2 subdivision (e).

3 ~~(g) Nothing in this section shall apply to the lessor of a~~  
4 ~~mobilehome, as defined in Section 798.3 of the Civil Code.~~

5 ~~SEC. 3. Section 6073 is added to the Business and~~  
6 ~~Professions Code, to read:~~

7 ~~6073. (a) An attorney, or unlawful detainer assistant, as~~  
8 ~~defined in Section 6400, representing, advising, or providing~~  
9 ~~self-help service, as defined in subdivision (d) of Section 6400,~~  
10 ~~to a person that is a defendant to an unlawful detainer claim, shall~~  
11 ~~provide to the person the following written notice in not less than~~  
12 ~~8-point type:~~

13 ~~“Negative Credit Reporting: A tenant’s failure to successfully~~  
14 ~~defend an unlawful detainer claim made by the owner to regain~~  
15 ~~possession of the property may result in a consumer credit~~  
16 ~~reporting agency making a negative credit report against the~~  
17 ~~tenant, which may negatively affect the tenant’s ability to qualify~~  
18 ~~for, among other things, rental housing.~~

19 ~~Answer: The facts asserted in the tenant’s answer to the~~  
20 ~~complaint brought by the owner are made under penalty of~~  
21 ~~perjury under the laws of the State of California. By signing the~~  
22 ~~answer, the tenant or his or her agent affirms or declares under~~  
23 ~~penalty of perjury that the facts asserted in the answer, including~~  
24 ~~the facts asserted by checking a box on the answer legal form, are~~  
25 ~~true and correct.”~~

26 ~~(b) “Unlawful detainer claim” means a proceeding, filing, or~~  
27 ~~action affecting rights or liabilities of any person that arises~~  
28 ~~under Chapter 4 (commencing with Section 1159) of Title 3 of~~  
29 ~~Part 3 of the Code of Civil Procedure and that contemplates~~  
30 ~~adjudication by a court.~~

31 ~~SEC. 4. Section 6416 is added to the Business and~~  
32 ~~Professions Code, to read:~~

33 ~~6416. An unlawful detainer assistant shall comply with~~  
34 ~~Section 6073 relative to assistance provided to a person that is a~~  
35 ~~defendant to an unlawful detainer claim.~~

36 ~~SEC. 5.—~~

37 ~~SECTION 1. Section 17980.7 of the Health and Safety Code~~  
38 ~~is amended to read:~~

1 17980.7. If the owner fails to comply within a reasonable  
2 time with the terms of the order or notice issued pursuant to  
3 Section 17980.6, the following provisions shall apply:

4 (a) The enforcement agency may seek and the court may order  
5 imposition of the penalties provided for under Chapter 6  
6 (commencing with Section 17995).

7 (b) (1) The enforcement agency may seek and the court may  
8 order the owner to not claim any deduction with respect to state  
9 taxes for interest, taxes, expenses, depreciation, or amortization  
10 paid or incurred with respect to the cited structure, in the taxable  
11 year of the initial order or notice, in lieu of the enforcement  
12 agency processing a violation in accordance with Sections 17274  
13 and 24436.5 of the Revenue and Taxation Code.

14 (2) If the owner fails to comply with the terms of the order or  
15 notice to correct the condition that caused the violation pursuant  
16 to Section 17980.6, the court may order the owner to not claim  
17 these tax benefits for the following year.

18 (c) The enforcement agency, tenant, or tenant association or  
19 organization may seek and the court may order, the appointment  
20 of a receiver for the substandard building pursuant to this  
21 subdivision. In its petition to the court, the enforcement agency,  
22 tenant, or tenant association or organization shall include proof  
23 that notice of the petition was served not less than three days  
24 prior to filing the petition, pursuant to Article 3 (commencing  
25 with Section 415.10) of Chapter 4 of Title 5 of Part 2 of the Code  
26 of Civil Procedure, to all persons with a recorded interest in the  
27 real property upon which the substandard building exists.

28 (1) In appointing a receiver, the court shall consider whether  
29 the owner has been afforded a reasonable opportunity to correct  
30 the conditions cited in the notice of violation.

31 (2) The court shall not appoint any person as a receiver unless  
32 the person has demonstrated to the court his or her capacity and  
33 expertise to develop and supervise a viable financial and  
34 construction plan for the satisfactory rehabilitation of the  
35 building. A court may appoint as a receiver a nonprofit  
36 organization or community development corporation. In addition  
37 to the duties and powers that may be granted pursuant to this  
38 section, the nonprofit organization or community development  
39 corporation may also apply for grants to assist in the  
40 rehabilitation of the building.

1 (3) If a receiver is appointed, the owner and his or her agent of  
2 the substandard building shall be enjoined from collecting rents  
3 from the tenants, interfering with the receiver in the operation of  
4 the substandard building, and encumbering or transferring the  
5 substandard building or real property upon which the building is  
6 situated.

7 (4) Any receiver appointed pursuant to this section shall have  
8 all of the following powers and duties in the order of priority  
9 listed in this paragraph, unless the court otherwise permits:

10 (A) To take full and complete control of the substandard  
11 property.

12 (B) To manage the substandard building and pay expenses of  
13 the operation of the substandard building and real property upon  
14 which the building is located, including taxes, insurance, utilities,  
15 general maintenance, and debt secured by an interest in the real  
16 property.

17 (C) To secure a cost estimate and construction plan from a  
18 licensed contractor for the repairs necessary to correct the  
19 conditions cited in the notice of violation.

20 (D) To enter into contracts and employ a licensed contractor as  
21 necessary to correct the conditions cited in the notice of  
22 violation.

23 (E) To collect all rents and income from the substandard  
24 building.

25 (F) To use all rents and income from the substandard building  
26 to pay for the cost of rehabilitation and repairs determined by the  
27 court as necessary to correct the conditions cited in the notice of  
28 violation.

29 (G) To borrow funds to pay for repairs necessary to correct the  
30 conditions cited in the notice of violation and to borrow funds to  
31 pay for any relocation benefits authorized by paragraph (6) and,  
32 with court approval, secure that debt and any moneys owed to the  
33 receiver for services performed pursuant to this section with a  
34 lien on the real property upon which the substandard building is  
35 located. The lien shall be recorded in the county recorder's office  
36 in the county within which the building is located.

37 (H) To exercise the powers granted to receivers under Section  
38 568 of the Code of Civil Procedure.

1 (5) The receiver shall be entitled to the same fees,  
2 commissions, and necessary expenses as receivers in actions to  
3 foreclose mortgages.

4 (6) If the conditions of the premises or the repair or  
5 rehabilitation thereof significantly affect the safe and sanitary use  
6 of the substandard building by any tenant, to the extent that the  
7 tenant cannot safely reside in his or her unit, then the receiver  
8 shall provide relocation benefits in accordance with subparagraph  
9 (A) of paragraph (3) of subdivision (e).

10 (7) The relocation compensation provided for in this section  
11 shall not preempt any local ordinance that provides for greater  
12 relocation assistance.

13 (8) In addition to any reporting required by the court, the  
14 receiver shall prepare monthly reports to the state or local  
15 enforcement agency which shall contain information on at least  
16 the following items:

17 (A) The total amount of rent payments received.

18 (B) Nature and amount of contracts negotiated relative to the  
19 operation or repair of the property.

20 (C) Payments made toward the repair of the premises.

21 (D) Progress of necessary repairs.

22 (E) Other payments made relative to the operation of the  
23 building.

24 (F) Amount of tenant relocation benefits paid.

25 (9) The receiver shall be discharged when the conditions cited  
26 in the notice of violation have been remedied in accordance with  
27 the court order or judgment and a complete accounting of all  
28 costs and repairs has been delivered to the court. Upon removal  
29 of the condition, the owner, the mortgagee, or any lienor of  
30 record may apply for the discharge of all moneys not used by the  
31 receiver for removal of the condition and all other costs  
32 authorized by this section.

33 (10) After discharging the receiver, the court may retain  
34 jurisdiction for a time period not to exceed 18 consecutive  
35 months, and require the owner and the enforcement agency  
36 responsible for enforcing Section 17980 to report to the court in  
37 accordance with a schedule determined by the court.

38 (11) The prevailing party in an action pursuant to this section  
39 shall be entitled to reasonable attorney's fees and court costs as  
40 may be fixed by the court.

1 (12) The county recorder may charge and collect fees for the  
2 recording of all notices and other documents required by this  
3 section pursuant to Article 5 (commencing with Section 27360)  
4 of Chapter 6 of Division 2 of Title 3 of the Government Code.

5 (13) This section does not limit those rights available to  
6 tenants and owners under any other provision of the law.

7 (14) This section does not deprive an owner of a substandard  
8 building of all procedural due process rights guaranteed by the  
9 California Constitution and the United States Constitution,  
10 including, but not limited to, receipt of notice of the violation  
11 claimed and an adequate and reasonable period of time to comply  
12 with any orders which are issued by the enforcement agency or  
13 the court.

14 (d) (1) The enforcement agency may seek and the court may  
15 order the owner of residential rental property to successfully  
16 complete 15 hours of educational courses, seminars, or  
17 workshops that are approved by the Department of Real Estate or  
18 the enforcement agency. The owner subject to court order under  
19 this subdivision shall pay for any expenses related to taking the  
20 educational courses, including, but not limited to, any registration  
21 fee charged by the course provider. The courses shall include the  
22 following:

23 (A) Not less than a three-hour course in ethics, professional  
24 conduct, and legal aspects of ethics in rental property  
25 management, which may include, but not be limited to, relevant  
26 legislation, regulations, articles, reports, studies, court decisions,  
27 and information that relates to rental housing.

28 (B) Not less than a three-hour course in fair housing law,  
29 which shall include, but not be limited to, fair housing law as it  
30 relates to leasing residential housing.

31 (C) Not less than six hours related to residential rental  
32 property maintenance, which may include, but not be limited to,  
33 elements of maintenance management, habitability laws,  
34 avoiding negligence, liability for nuisance and nuisance law,  
35 identifying and avoiding potential liabilities, property  
36 inspections, completing maintenance requests, inspecting and  
37 evaluating a unit upon move-out and move-in, preparing for  
38 emergency maintenance, preventive maintenance, providing  
39 quality customer service, and insurance coverage.



1 (D) Other courses and programs that will enable an owner and  
2 his or her agents to achieve a high level of competence in serving  
3 tenants, including, but not limited to, the teaching of techniques  
4 that will contribute to improving the landlord-tenant relationship,  
5 energy conservation techniques, and the owner's and his or her  
6 agent's knowledge of landlord-tenant law.

7 (2) For purposes of this subdivision, "successful completion"  
8 of a course described in subparagraphs (A) to (D), inclusive, of  
9 paragraph (1) means to obtain a certificate of completion from  
10 the provider of the course and, as may be directed by the  
11 enforcement agency or the court, provide the certificate of  
12 completion to the enforcement agency or the court.

13 (3) This subdivision shall not be construed to preempt the field  
14 of the subject matter or otherwise restrict other education  
15 programs or laws intended to provide education courses for  
16 landlords, ~~including, but not limited to, existing education~~  
17 ~~programs by the enforcement agency or city attorney.~~

18 (4) This subdivision shall become operative on July 1, 2006.

19 (e) If the court finds that a building is in a condition which  
20 substantially endangers the health and safety of residents  
21 pursuant to Section 17980.6, upon the entry of any order or  
22 judgment, the court shall do all of the following:

23 (1) Order the owner to pay all reasonable and actual costs of  
24 the enforcement agency including, but not limited to, inspection  
25 costs, investigation costs, enforcement costs, attorney fees or  
26 costs, and all costs of prosecution.

27 (2) Order that the local enforcement agency shall provide the  
28 tenant with notice of the court order or judgment.

29 (3) (A) Order that if the owner undertakes repairs or  
30 rehabilitation as a result of being cited for a notice under this  
31 chapter, and if the conditions of the premises or the repair or  
32 rehabilitation thereof significantly affect the safe and sanitary use  
33 of the premises by any lawful tenant, so that the tenant cannot  
34 safely reside in the premises, then the owner shall provide or pay  
35 relocation benefits to each lawful tenant. These benefits shall  
36 consist of actual reasonable moving and storage costs and  
37 relocation compensation. The actual moving and storage costs  
38 shall consist of all of the following:

39 (i) Transportation of the tenant's personal property to the new  
40 location. The new location shall be in close proximity to the

1 substandard premises, except where relocation to a new location  
2 beyond a close proximity is determined by the court to be  
3 justified.

4 (ii) Packing, crating, unpacking, and uncrating the tenant's  
5 personal property.

6 (iii) Insurance of the tenant's property while in-transit.

7 (iv) The reasonable replacement value of property lost, stolen,  
8 or damaged (not through the fault or negligence of the displaced  
9 person, his or her agent or employee) in the process of moving,  
10 where insurance covering the loss, theft, or damage is not  
11 reasonably available.

12 (v) The cost of disconnecting, dismantling, removing,  
13 reassembling, reconnecting, and reinstalling machinery,  
14 equipment, or other personal property of the tenant, including  
15 connection charges imposed by utility companies for starting  
16 utility service.

17 (B) (i) The relocation compensation shall be an amount equal  
18 to the differential between the contract rent and the fair market  
19 rental value determined by the federal Department of Housing  
20 and Urban Development for a unit of comparable size within the  
21 area for the period that the unit is being repaired, not to exceed  
22 120 days.

23 (ii) If the court finds that a tenant has been substantially  
24 responsible for causing or substantially contributing to the  
25 substandard conditions, then the relocation benefits of this  
26 section shall not be paid to this tenant. Each other tenant on the  
27 premises who has been ordered to relocate due to the substandard  
28 conditions and who is not substantially responsible for causing or  
29 contributing to the conditions shall be paid these benefits and  
30 moving costs at the time that he or she actually relocates.

31 (4) Determine the date when the tenant is to relocate, and  
32 order the tenant to notify the enforcement agency and the owner  
33 of the address of the premises to which he or she has relocated  
34 within five days after the relocation.

35 (5) (A) Order that the owner shall offer the first right to  
36 occupancy of the premises to each tenant who received benefits  
37 pursuant to subparagraph (A) of paragraph (3), before letting the  
38 unit for rent to a third party. The owner's offer on the first right  
39 to occupancy to the tenant shall be in writing, and sent by  
40 first-class certified mail to the address given by the tenant at the

1 time of relocation. If the owner has not been provided the  
2 tenant's address by the tenant as prescribed by this section, the  
3 owner shall not be required to provide notice under this section  
4 or offer the tenant the right to return to occupancy.

5 (B) The tenant shall notify the owner in writing that he or she  
6 will occupy the unit. The notice shall be sent by first-class  
7 certified mail no later than 10 days after the notice has been  
8 mailed by the owner.

9 (6) Order that failure to comply with any abatement order  
10 under this chapter shall be punishable by civil contempt,  
11 penalties under Chapter 6 (commencing with Section 17995), and  
12 any other penalties and fines as are available.

13 (f) The initiation of a proceeding or entry of a judgment  
14 pursuant to this section or Section 17980.6 shall be deemed to be  
15 a "proceeding" or "judgment" as provided by paragraph (4) or  
16 (5) of subdivision (a) of Section 1942.5 of the Civil Code.

17 (g) The term "owner," for the purposes of this section, shall  
18 include the owner, including any public entity that owns  
19 residential real property, at the time of the initial notice or order  
20 and any successor in interest who had actual or constructive  
21 knowledge of the notice, order, or prosecution.

22 (h) These remedies shall be in addition to those provided by  
23 any other law.

24 (i) This section and Section 17980.6 do not impair the rights of  
25 an owner exercising his or her rights established pursuant to  
26 Chapter 12.75 (commencing with Section 7060) of Division 7 of  
27 Title 1 of the Government Code.